

EXHIBIT “A” Version 2

40.440 HABITAT CONSERVATION

40.440.010 INTRODUCTION

A. Purpose.

4. The provisions of this chapter dealing with existing agricultural activities recognize:

- a. That the maintenance and enhancement of natural resource-based industries, including agriculture, is a goal of the state Growth Management Act;
- b. That any regulation should be consistent with the “right to farm” provisions in Chapter 9.26 of this Code;
- c. That agricultural lands can provide habitat;
- d. That habitat protection must relate to the baseline of existing functions and values given historic agricultural practices, rather than seeking to restore pre-agricultural conditions;
- e. That since agricultural activities are dynamic, habitat functions and values can be expected to fluctuate during the course of an agricultural cycle, which fluctuation must be considered in identifying existing functions and values; and
- f. That it is expected that continuation of existing agriculture will not degrade existing functions and values unless sediment, nutrients, or chemicals are allowed to enter streams, or existing beneficial canopy in close proximity to streams is significantly degraded;

40.440.040 SPECIFIC ACTIVITIES

B. Agricultural Uses, including Animal Husbandry (reserved).

1. Applicability.

a. Non-riparian habitat.

- (1) Agricultural activities in existence on or after [the date of ordinance adoption] within designated non-riparian habitat areas are presumed not to cause substantial degradation of existing habitat functions and values and are, therefore, exempt from regulation under this chapter.
- (2) The conversion of designated non-riparian habitat areas to agricultural use subsequent to [the date of ordinance adoption] shall be subject to the non-development clearing rules of this chapter. Conversion does not include changes from one agricultural use to another agricultural use or changes in crops.

b. Riparian habitat.

- (1) Agricultural activities in existence on [the date of ordinance adoption] within designated riparian habitat areas, and the expansion thereof onto adjacent lands not to exceed twenty-five percent (25%) of the footprint of the existing agricultural use

1 (Agricultural/habitat protection plan only), shall be subject to the agricultural module
2 provided below.

3 (2) The conversion of designated riparian habitat areas to agricultural use, other than an
4 expansion allowed for in subsection (b)(1) above, subsequent to [the date of
5 ordinance adoption] shall be subject to:

6 (a) The Agricultural/habitat protection plan option (Section 40.440.040(B)(2)(a)), if
7 undertaken on lands zoned agriculture, forest, or ag-wildlife;

8 (b) The non-development clearing rules of this chapter if undertaken on lands not
9 zoned agriculture, forest, of ag-wildlife.

10 (c) Conversion does not include changes from one agricultural use to another
11 agricultural use or changes in crops.

12
13 2. Agricultural module. Where applicable, the following options are available to be used for
14 compliance with this section.

15 a. Agricultural/habitat protection plan option.

16 (1) Regulated area. For the purposes of an agricultural/habitat protection plan, the
17 regulated riparian area shall be [100/250] feet from the ordinary high water mark of
18 Type S streams, [100/200] feet from the ordinary high water mark of Type F streams,
19 [75/100] feet from the ordinary high water mark of Type Np streams, and 75 feet
20 from the ordinary high water mark of Type Ns streams. The plan may include
21 practices and other mitigation measures on land outside the regulated riparian area to
22 achieve the standard set forth in subsection (2) below.

23 (2) Standard. An agricultural/habitat protection plan shall be approved if its
24 implementation will not substantially degrade habitat functions and values that
25 existed within the area designated in subsection (1) above on [the date of ordinance
26 adoption], considering normal fluctuations due to the agricultural cycle. A plan may
27 be submitted by a group of neighborhood owners whose properties are in close
28 proximity in which case the foregoing standard shall be applied to the common plan.

29 (3) Plan contents. Agricultural/habitat protection plans shall, at a minimum, include the
30 following:

31 (a) An approximate mapping of existing and proposed structures, roads, driveways,
32 utilities, property lines, and agricultural uses.

33 (b) A map of regulated riparian habitat areas.

34 (c) Identification of existing habitat functions and values within the regulated habitat
35 area.

36 (d) A description of best management practices and other mitigation measures to be
37 undertaken in order to achieve the standard in subsection a(2) above.

38 (e) The owner's signature attesting that the information in the plan is accurate to the
39 best of the owner's knowledge, and the mitigation measures specified in the plan
40 will be implemented.

41 (f) The signature of an ag-habitat technician certified by the county attesting that the
42 plan satisfies the standard in subsection a(2) above.

1 (4) Guidelines. The responsible official shall work with a committee appointed by the
2 board to include interest group representatives (at least one of whom shall be a
3 designee of the Clark-Cowlitz Farm Bureau, whose view(s) shall be given
4 appropriate weight to ensure that the guidelines will be both practical and cost
5 effective) and habitat professionals to develop for board adoption following a duly
6 advertised public hearing a set of guidelines which:

7 (a) includes a checklist to identify riparian habitat functions and values;

8 (b) identifies potential negative habitat affects of various agricultural activities; and

9 (c) describes practices and other mitigation measures to mitigate or
10 minimize those effects\

11 (d) includes “off-the-shelf” agricultural/habitat protection plans which may
12 be applied to typical agricultural properties and activities.

13 The guidelines shall provide that pesticide use within riparian areas must be
14 described in the management plan and conform to label instructions.

15 (5) Approval. Agricultural/habitat protection plans shall be prepared by an ag-habitat
16 technician certified by the responsible official to have completed a training program
17 on application of the guidelines. Ag-habitat technicians shall have received training
18 in application of this chapter, which training program shall be made available to any
19 interested party. Training classes may be facilitated by interest groups such as the
20 Clark-Cowlitz Farm Bureau using trainers from the Clark Conservation District,
21 WSU Extension, or other groups as may be certified as qualified trainers by the
22 responsible official. An ag-habitat technician shall approve the plan as meeting the
23 standard and content requirements of subsection 40.440.040(B)(2)(a)(2) and (3). An
24 owner dissatisfied with the review by an ag-habitat technician may seek approval of
25 the proposed management plan by the responsible official whose Type I decision
26 may be appealed under the provisions of Chapter 40.510 (Type I, II, III & IV
27 Processes).

28 (6) Filing. The ag-habitat technician shall notify the county responsible official
29 of the adoption of an approved Agricultural/habitat protection plan by a
30 property owner indicating the property covered by the plan and, at the choice
31 of the property owner either providing a copy of the plan or summarizing the
32 contents of the plan. Notice of such approval shall also be recorded with the
33 Clark County Auditor and run with the land unless the plan is modified or
34 rescinded.

35 (7) Modification/rescission. Agricultural/habitat protection plans may be modified by
36 the owner at any time utilizing the same process as applicable to initial approval.
37 Plans may be rescinded by the owner with approval of the responsible official if the
38 owner certifies either that future agricultural activities will be undertaken utilizing the
39 default option or agricultural activities have ceased. Notice of
40 modification/rescission shall be recorded with the Clark County Auditor.

41 b. Default option.

42 (1) Regulated area. For the purposes of the default option, the regulated riparian area is
43 divided into two zones. Except as provided below the inner zone, closest to the
44 stream, extends from the ordinary high water mark outward fifty (50) feet on Types S
45 and F streams and thirty (30) feet on Type N streams. The outer zone extends an
46 additional fifty (50) feet on Types S and F streams and forty-five (45) feet on Type N

1 streams. Where slopes exceed twenty-five percent (25%), the inner zone is the
2 greater of the prescribed zone or the top of the slope break. Where wetlands are
3 present within the inner zone, the zone is extended to the greater of the prescribed
4 width of the inner zone or the wetland buffer as designated in Chapter 40.450
5 (Wetland Protection). However, in no case is the inner zone greater than the
6 combined widths prescribed for in the inner and outer zones for that stream type.
7 Where there is an existing road within the inner zone, the zone stops at the edge of
8 the road improvement that is closest to the stream and the outer zone extends outward
9 from that edge.

10 (2) Standard. Clearing within the inner zone is allowed only to enhance habitat functions
11 and values. Animal husbandry within the inner zone is prohibited. Clearing and
12 animal husbandry within the outer zone shall not substantially degrade habitat
13 functions and values as they existed on [the date of ordinance adoption], after
14 considering normal fluctuations due to the agricultural cycle. Although it is
15 presumed that continuation of agricultural activities within the outer zone that existed
16 on [the date of ordinance adoption] will not substantially degrade existing habitat
17 functions and values, evidence of degradation, such as excess sediment, nutrients or
18 chemicals moving from the outer zone into the stream constitute grounds for
19 enforcement action which may require restoration of lost functions and values.
20 Pesticide application within the outer zone must conform to label specifications and
21 application within the inner zone must be by a licensed applicator.

22 (3) Reasonable use. If the inner zone impacts more than fifty percent (50%) of a parcel
23 that is ten (10) acres or less in area, or more than twenty-five percent (25%) of a
24 parcel that is five (5) acres or less in area, the responsible official may approve a
25 reasonable use reduction to the width of the inner zone. In such case, clearing and
26 animal husbandry may be allowed up to ten (10) feet from the ordinary high water
27 mark provided that reasonable practices and other appropriate mitigation measures
28 are employed to limit sediment, nutrients and chemicals from entering the stream.

29 3. Administration.

30 a. No application fees apply to the approval of Agriculture/habitat protection plans.

31 b. No county review is associated with the default option unless the owner seeks approval of
32 a reasonable use reduction of the inner zone, which application shall be processed
33 without application fees.

34 c. Evidence of violation of the standards in subsections 40.440.040(B)(2)(a)(2) or
35 (B)(2)(b)(2) shall be grounds for enforcement action under the provisions of Title 32
36 (Enforcement) and Section 40.440.030(F).
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